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**AN UNDER SUFFERANCE REPRESENTATION OBJECTION AND
COMPLAINT OVER:**

**All Applications for Highly Hazardous Pesticide Derogations from Forest
Stewardship Council and Related Probity Process and Transparency Issues**

(Australian Forest Managers FSC Highly Hazardous Pesticides Derogations 2015)

Dear Sirs and Mesdames

Introduction

In broad terms TEA has a lack of confidence around both the process and applications. We set out our concerns briefly in this document. We are making this objection and complaint under sufferance. It includes the identification of systemic FSC problems and conflicts of interest.

We claim the applications represent an expansion of highly hazardous chemical pesticide usage under the FSC certification banner, not a reduction or indeed even avoidance under IPM. We claim this so-called national application represents, in the main, a 'business as usual' approach rather than a temporary proposition.

We do not intend to go over the plethora of FSC documents, nor do we support the convoluted web, which the process clearly represents. We do not consider it to be our role to do much more than point out in broad terms the abject failure of both the applications and the process. We consider the process to be volunteer and community abuse.

However you can see that we have addressed this letter of complaint and objection to a wide range of people within the FSC web, which we believe may have at least some of the overall responsibilities for the shambles and who in any case may start to fix the situation which is clearly unacceptable.

The Environment Association

The Environment Association (TEA) Inc. is an unfunded, not for profit, regional, environment, volunteer-based, community association based in northern rural Tasmania.

TEA Inc. is a stakeholder in land use, forestry and forest conservation issues with a long-term interest in environmental and social outcomes in our region, Northern Tasmania, particularly with regard to forest conservation issues. The Environment Association has worked in the public interest since its inception in 1990.

The Environment Association (TEA) Inc. is a long-term independent stakeholder in any resolution to the complex and divisive forestry conflict in Tasmania. Specifically in terms of this application we are a stakeholder in relation to the activities and management of

the estate of Forico Pty Limited and Forestry Tasmania and any other forestry companies active in Northern Tasmania especially.

TEA is a stakeholder in any deliberation of Forestry Tasmania and Forico' applications for Highly Hazardous Pesticide Derogations from Forest Stewardship Council.

TEA is not represented by any other conservation organisation, including Environment Tasmania, formally or informally. We are not affiliated with any other organisation or any political party or any person contracted to provide advice or services over FSC or any other certification product.

We strongly support resolution of the divisive forestry conflict in Tasmania but that will not occur when people do not feel safe and indeed are not safe. Nor will it occur when the environment is being harmed.

FSC Principles

We quote from the document: 'FSC International Standard FSC Principles And Criteria For Forest Stewardship' FSC-STD-01-001 (version 4-0) EN

"6.6 Management systems shall promote the development and adoption of environmentally friendly non-chemical methods of pest management and strive to avoid the use of chemical pesticides. World Health Organization Type 1A and 1B and chlorinated hydrocarbon pesticides; pesticides that are persistent, toxic or whose derivatives remain biologically active and accumulate in the food chain beyond their intended use; as well as any pesticides banned by international agreement, shall be prohibited. ..."

"6.9 The use of exotic species shall be carefully controlled and actively monitored to avoid adverse ecological impacts."

"10.7 Measures shall be taken to prevent and minimize outbreaks of pests, diseases, fire and invasive plant introductions. Integrated pest management shall form an essential part of the management plan, with primary reliance on prevention and biological control methods rather than chemical pesticides and fertilizers. Plantation management should make every effort to move away from chemical pesticides and fertilizers, including their use in nurseries. The use of chemicals is also covered in Criteria 6.6 and 6.7."

In Australia it can be shown that the principles of FSC International Standard FSC Principles And Criteria For Forest Stewardship are effectively not being actively pursued in that FSC Australia is negligent and derelict in not ensuring a proper adherence and promotion of the Standard and of the Derogation process.

TEA claims that contrary to the above that chemicals are considered a part of forestry, erroneously termed "forest management".

We quote from FSC-STD-01-002 (V1-0) EN FSC Glossary Of Terms:

“Chemicals”

“The range of fertilizers, insecticides, fungicides, and hormones which are used in forest management. FSC Source: FSC-STD-01-001”

Note FSC does not say, “which may be used” it says which are used. Not much scope for an FSC certified organic plantation there it would seem.

Issues around FSC Highly Hazardous Pesticide Derogations

The process for approving the FSC Highly Hazardous Pesticide Derogations are described in the document ‘International Pesticide Derogation Procedure’ FSC-PRO-30-001 V1-0 EN. There are several other documents however, which are mentioned further. The whole can only be described as complex and unwieldy.

For example this document quotes the following FSC documents as references:

1. FSC-STD-01-001 FSC Principles and Criteria
2. FSC-POL-30-001 FSC Pesticides Policy
3. FSC-STD-01-005 FSC Dispute Resolution System
4. FSC-PRO-01-005 Processing Appeals

The Meaning of the Term Derogation.

The Oxford dictionary defines Derogation thus:

Definition of derogation in English: noun

1 An exemption from or relaxation of a rule or law: countries assuming a derogation from EC law

2 [mass noun] The perception or treatment of someone or something as being of little worth: the derogation of women

Origin

Late Middle English (in the sense 'impairment of the force of'): from Latin derogation (n-), from the verb derogare (see derogate).

DEROGATION (<http://www.lectlaw.com/def/d144.htm>)

“The partial abrogation of a law. To derogate from a law is to enact something which is contrary to it, while to abrogate a law is to abolish it entirely.”

der·o·gate (der'·-gat') (<http://www.thefreedictionary.com/derogation>)

1. To take away; detract: an error that will derogate from your reputation.

2. *To deviate from a standard or expectation; go astray: a clause allowing signers of the agreement to derogate from its principles during a state of emergency.*

Derogation, From Wikipedia, the free encyclopaedia

“Derogation is the partial revocation of a law, as opposed to abrogation or the total abolition of a law. The term is used in both civil law and common law. It is sometimes used, loosely, to mean abrogation, as in the legal maxim: Lex posterior derogat priori, i.e. a subsequent law imparts the abolition of a previous one.

Derogation differs from dispensation in that it applies to the law, where dispensation applies to specific people affected by the law.

In terms of European Union legislation, a derogation can also imply that a member state delays the implementation of an element of an EU Regulation (etc.) into their legal system over a given timescale,[1] such as five years; or that a member state has opted not to enforce a specific provision in a treaty due to internal circumstances (typically a state of emergency).”

So clearly there is a temporary intent in the term derogation. Otherwise the word abrogation would be the correct one. Temporary means: lasting only a short while. Or lasting for only a limited period of time; not permanent.

Temporary:

Also found in: Dictionary/thesaurus, Medical, Acronyms, Encyclopaedia, Wikipedia.

Temporary adjective acting, ad tempus, brief, changeable, deciduous, elusive, ephemeral, evanescent, fleeting, fugacious, fugitive, impermanent, interim, limited, makeshift, momentary, monohemorous, nondurable, perishable, provisional, shifting, short-lived, stopgap, temporal, transient, transitional, transitive, transitory, unstable, volatile

Associated concepts: temporary restraining order See also: acting, brief, ephemeral, interim, interlocutory, provisional, tentative, transient, transitory, vicarious

Burton's Legal Thesaurus, 4E. Copyright © 2007 by William C. Burton. Used with permission of The McGraw-Hill Companies, Inc.

TEMPORARY. That which is to last for a limited time; as, a temporary statute, or one which is limited in its operation for a particular period of time after its enactment the opposite of perpetual.

A Law Dictionary, Adapted to the Constitution and Laws of the United States. By John Bouvier. Published 1856.

And from <http://definitions.uslegal.com/t/temporary-permit/>

“Temporary permits refer to a written or oral authorization to do something for a short duration. They are permits issued temporarily. Usually they are issued on payment of a prescribed fee for a specific period beyond which it has no validity.”

TEA thus claims that approving a temporary application or providing derogation over and over is obviously tantamount to permanence.

FSC defines long term but strangely not temporary. TEA argues that temporary is not long term:

“Long term”

“The time-scale of the forest owner or manager as manifested by the objectives of the management plan, the rate of harvesting, and the commitment to maintain permanent forest cover. The length of time involved will vary according to the context and ecological conditions, and will be a function of how long it takes a given ecosystem to recover its natural structure and composition following harvesting or disturbance, or to produce mature or primary conditions. FSC Source: FSC-STD-01-001”

In terms of the short rotation tree crop multiple repeats of 5-year derogations is obviously a virtual permanent arrangement. An expeditious, cynical and callous discarding of the FSC principles.

This TEA argues and asserts that what we are now seeing from FSC aspirants is an application to supplant the FSC principles and an abrogation of those and all of that is being facilitated by Mr O’Grady, formerly of Timbercorp.

The FSC Pesticides Derogation Procedure

The document: FSC-PRO-30-001 V1-0 EN Pesticide Derogation Procedure states:

“In relation to pesticides, the FSC Principles and Criteria aim to prevent, minimise and mitigate the negative environmental and social impacts of pesticides use whilst promoting economically viable management of the world’s forests.

In accordance with the FSC Pesticides Policy, pesticides containing any of the active ingredients listed in the FSC list of ‘highly hazardous’ pesticides (HHP) shall not be used in FSC-certified Management Units except in specific circumstances authorized by the FSC Board of Directors through the issuance of a formal temporary derogation.

FSC takes a precautionary approach to pesticide use, in part because experience has repeatedly shown the difficulty of ensuring consistent proper use, and the limits of knowledge of the ecological and environmental impacts of pesticides and the consequent unforeseen consequences of their use.”

TEA disputes that a precautionary approach is used by FSC.

FSC Director General, Kim Carstensen's recent comments are interesting and are noted:

"The Pesticides Derogation Procedure (FSC-PRO-30-001) (<https://ic.fsc.org/preview.fsc-pro-30-001-v1-0-en-pesticides-derogation-procedure.a-4562.pdf>) describes the requirements to be granted with a derogation. When the applicant fails to demonstrate compliance with these requirements (eg. the applicant does not demonstrate that the 'highly hazardous' pesticide is the only feasible way to control a pest that is causing severe damages; or does not have enough measures in place to prevent negative social and environmental impacts; or has not conducted an appropriate stakeholder consultation, etc.), a derogation is rejected."

FSC should look closely at the extent of the stakeholder consultation, which has occurred. A large number of people are potentially affected, were they consulted?

"Stakeholder"

"Any individual or group whose interests are affected by the way in which a forest is managed. FSC Source: FSC-STD-30-010 V2-0"

Past Derogations Provided by FSC in 2011

1. FSC_DER_30_V1_0_EN_Amitrole_Aus_01022011.pdf
2. FSC_DER_30_V1_0_EN_Alpha_cypermethrin_Aus_01022011.pdf
3. FSC_DER_30_V1_0_EN_Fipronil_Aus_01022011.pdf
4. FSC_DER_30_V1_0_EN_Hexazinone_Aus_01022011_1.pdf
5. FSC_DER_30_V1_0_EN_Sodium%20Fluoroacetate_Aus_01022011.pdf
6. FSC_DER_30_V1_0_EN_Simazine_Aus_01022011.pdf
7. FSC_DER_30_V1_0_EN_Terbuthylazine_Aus_01022011.pdf

Current Temporary Applications and the definition and meaning of the term Temporary.

The following list is extracted from the Stakeholder Engagement Plan by Dare

- | | |
|--------------------|--------------------|
| 1. 1080 | 4. Fipronyl |
| 2. Amitrole | 5. Cuprous Oxide |
| 3. Alpha- cyper'in | 6. Copper Sulphate |

7. Picloram

9. Pindone

8. Glufosinate ammonium

This represents an increase of different types of highly hazardous chemicals being applied for FSC derogation of almost 30%. It seems therefore in relation to FSC that the FSC Principles and the IPM approach are failing.

The interesting thing about the applications is that there would appear to be three certifying bodies that will be making the applications. Those three bodies are serving 10 forestry companies.

If we were to accept the proposition that there can be a national approach because the situation around the application of highly hazardous pesticides in forestry is comparable across the nation then TEA asks FSC International to consider the following as a relevant consideration: Currently, based on the 2015 applications, there are two forestry companies which claims to need to use ONE only highly hazardous pesticide to manage their plantations. There is one that needs two highly hazardous pesticides. There are 3 companies claiming they need 3 highly hazardous pesticides. There is a further 3 companies claiming they cannot conduct their operations viably with less than 4 highly hazardous pesticides. There is 1 company claiming they need the extraordinary 6 highly hazardous pesticides.

So the range of need for highly hazardous pesticides is at a ration of 6 to 1 across the continent of Australia and across FSC aspiring and certified forestry corporations. That could hardly be considered to be a nationally consistent approach.

TEA's view is that each forestry company should be making separate application and providing their own explanation of their own needs, methods of IPM and circumstances. We have no confidence that the approach of one company is comparable with another.

TEA considers that the applications are not sufficiently particularised for each forestry company who is making the joint application. That represents a devaluation of the concept of IPM and the entrenchment and indeed a potential pathway for an expansion of highly hazardous pesticides. TEA is opposed to this nationalised approach.

From a process perspective we consider too it has the strong potential to confuse stakeholders.

Other FSC Documentation over Highly Hazardous Pesticides.

Regarding 'Indicators And Thresholds For The Identification Of 'Highly Hazardous' Pesticides' (HHP) FSC-STD-30-001 V1-0 EN, again the whole can only be described as complex and unwieldy, full of weasel clauses. For example this document quotes the following FSC documents as references:

1. FSC-POL-30-001 FSC Pesticides Policy
2. FSC-PRO-01-004 Processing Pesticide Derogation Applications

3. FSC-STD-01-002 FSC Glossary of Terms,

FSC Australia

FSC Australia has existed since 2006 (Responsible Forest Management Australia Limited was incorporated as a public company limited by guarantee (ABN 81 120 667 870)) yet still does not have a National Standard.

A National Office has some obligations regardless:

“FSC National Office: a legally established and independent FSC partner organization promoting responsible management of the world’s forests on behalf of FSC at the national level on the basis of a formal cooperation agreement. National Offices are required to establish a multi-stakeholder governance structure, similar to that of FSC AC.”

National IPM Advisory Group: FSC Australia has explicitly chosen to not have one of these. TEA has been advised that an attempt at a consensus over pesticides has been unsuccessful in FSC and that a group, which was formed about seven years ago, “imploded”.

TEA is also aware that FSC Australia claims to not have the physical and financial resources to convene and conduct a National IPM Advisory Group.

In our view FSC does not even, within itself in Australia, claim to have a stake over the responsible consideration of the highly hazardous pesticides. That was confirmed when we contacted the National Office. Thus TEA considers the FSC Australia is NOT *“promoting responsible management of the world’s forests on behalf of FSC at the national level”*.

TEA claims FSC Australia is in breach of FSC’s FSC-POL-30-001 (2005) EN FSC PESTICIDES POLICY, which states: “Promotion of ‘non-chemical’ methods of pest management as an element of an integrated pest management strategy;”

FSC Australia has obviously manifestly failed to promote IPM as it cannot even form a National IPM Advisory Group but rather ends up leaving it up to the industry-appointed or self-appointed Mr O’Grady to have his way.

One of the problems for FSC Australia, to be fair to it, is that the design of the structure of FSC overall is deeply problematic, where both the power and flow of funds largely benefit the certification bodies. National organisations such as FSC Australia are not adequately supported by FSC to the extent that they find it difficult to survive and to be effective. So from our perspective your FSC system is both highly complex, unwieldy, unfair procedurally and the national organisation is left to hang out to dry. It is a stupid system.

TEA Opposed to the Current Process.

The process has been poorly described and unjust, that is not procedurally fair. These problems are described. As such we consider the consultation to be inadequate.

TEA also questions the degree to which stakeholders have been identified and contacted around Australia. A list of neighbours for example should accompany each application.

We make the point that on the basis of the differences around neighbour and neighbour notification a national process would see not warranted. It is hard to consider that all neighbours of the various CW or FMU holdings have been notified. If the neighbours have not been notified of the derogation applications the consultation is, we assert, manifestly inadequate. The FMUs mainly cover large, indeed vast tracts of country with many titles over several states of Australia, being a whole continent. Just imagine if Europe was to make one application for the continent. That is what we are talking about here.

“As an integral part of the derogation process the group of forest management companies, invite all interested stakeholders to provide feedback on the draft derogation applications and process. A range of consultation opportunities are available during the 52 day consultation period which extends from 25 September until 16 November 2015.”

Stakeholder Engagement Plan –FSC Pesticide Derogation 2015

Dr Lain Dare wrote the Stakeholder Engagement Plan which at page 6 states:

“The opportunity to provide public comment enables stakeholders to prepare a considered document in response to the derogation application. While such an approach does not allow for an engaged discussion, the approach provides a public record of stakeholder concerns that can be used for consideration in decision-making processes.”

The trouble with this plan is that it does not clearly set out the full process, who created what and who has the responsibility for the various parts of the process, what rights and recourse stakeholders possess as of right.

What it really comes down to as expressed above would see to be that one's representation forms merely a record of concerns. For TEA this Plan is deficient and inadequate to the point that, along with matters such as the misidentification of draft documents and incomplete applications, we consider the engagement to be fundamentally compromised.

Dr Dare's stakeholder engagement plan gives the illusion that the Pesticide Derogation Advisory Group has some status and may have been created by, say FSC Australia, or even FSC International, given there is no FSC National Standard and given there is no FSC IPM Group in Australia.

TEA contacted Dr Dare by email on the 11th November and she responded promptly by email even though she is overseas. She stated amongst other statements:

“I have been informed of your email correspondence with Kevin so will attempt to give you as much detail as I can now via email, and I will call you when I return on Nov 23rd. I know that this date is later than the 16th deadline but I can include your response at that late notice.”

There are indeed issues, which could not be resolved without a discussion with Dr Dare.

However in the past TEA has arranged a late comment (to Woodmark) under FSC and when we did so we were informed our submission would not be considered. So we are now not very trusting of FSC processes.

2015 FSC Highly Hazardous Pesticide Derogation Stakeholder Survey

TEA will not be participating in this survey, which goes to Dr Dare.

TEA will not be participating in any online event being held post the close of the comment period.

Pesticide Derogation Advisory Group

TEA emailed Mr O’Grady regarding the Pesticide Derogation Advisory Group.

He stated:

“I am the convenor but am not taking part (due to conflict). The best contact is Lain Dare.

Note this group will not make any decisions on the derogations. That is done by FSC International in Bonn. The role of the group is detailed in the e mail I sent earlier today but is copied at the end of this message for your convenience.

The 3 experts named earlier will take part. Repeated below for clarity.

Social perspective

Margaret Alston OAM, Professor of Social Work and Head of Department

Director of the Gender, Leadership and Social Sustainability (GLASS) research unit, Caulfield Campus, Monash University.

Environmental perspective

Dayanthi Nugegoda B.Sc. (Hons), Ph.D., Professor of Ecotoxicology, School of Applied Sciences, RMIT University,

Engagement specialist (Lain Dare will chair the group).

Dr Lain Dare, Senior Research Fellow, Institute for Governance and Policy Analysis, University of Canberra

2 company people will be there to answer technical questions on behalf of the industry. I think these are from HVP and PF Olsen in which case they will be the people in the public contacts list for the derogations.”

So Mr O’Grady created the Pesticide Derogation Advisory Group. Mr O’Grady contacted the companies and brought the applications together. Mr O’Grady is also receiving the public stakeholder comments. We consider Mr O’Grady’s above description is not accurate and indeed we consider it may have been calculated to deceive.

From the Stakeholder Engagement Plan written by Dr Lain Dare it states (page 6) the Pesticide Derogation Advisory Group is comprised as follows:

The advisory group will comprise of the following:

Phil Whiteman, HVP Plantations

David Bennett, PF Olsen Australia

Dr Dayanthi Nugegoda, RMIT (TBC)

Professor Margaret Alston, Monash University (TBC)

Dr Lain Dare, University of Canberra (Independent Facilitator)

Thus the two industry people who are representing forestry applicants are on the Pesticide Derogation Advisory Group and presumably would be within the decision-making process. It is a blatant bias TEA is unwilling to tolerate.

Then the Stakeholder Engagement Plan states:

“At the completion of the 52 day consultation period all comments received will be evaluated by the Pesticide Derogation Advisory Group. This advisory group will consist of representatives of the economic, environmental and social chambers of FSC Australia, in addition to the independent stakeholder engagement facilitator.”

This gives the incorrect impression that FSC Australia chose the “representatives” being the members of the Pesticide Derogation Advisory Group and that it may have some official status. TEA considers the Pesticide Derogation Advisory Group may have no official status but rather more notably has conflicts of interest, an issue which we discuss and claim below.

TEA considers that it would be irresponsible for the Board or officers of FSC Australia to set up such a Pesticide Derogation Advisory Group without a terms of reference (which TEA cannot find), without a clear decision to do so from The Board and without a publicly advertised recruitment process onto the group.

It may be that the Pesticide Derogation Advisory Group is nothing more than a forestry industry conceived outfit. Regardless of the probity of some of the members of the Pesticide Derogation Advisory Group, we nonetheless consider the outfit to lack transparency. TEA considers there to be a systemic problem with the process, which has

been devised, and the Pesticide Derogation Advisory Group is caught within that conception.

TEA notes the aim in the Plan to achieve a consensus:

“Where the advisory group is unable to reach consensus discussions will be facilitated by the independent stakeholder engagement facilitator. If following facilitation consensus is still not reached, the range of recommendations identified by the advisory group will be included within the derogation applications for consideration by FSC International.”

It seems the Stakeholder Engagement Plan may also be the inadequate surrogate for the Pesticide Derogation Advisory Group terms of reference. So the writer of the plan writes her own process.

Regarding consensus TEA notes the FSC definition:

“Consensus”

“General agreement, characterized by the absence of sustained opposition to substantial issues by any important part of the concerned interests and by a process that involves seeking to take into account the views of all parties concerned and to reconcile any conflicting arguments (adapted from ISO/IEC Guide 2:1991). FSC Source: FSC-STD-01-005 V1-0”

The process is not sufficiently described for the Pesticide Derogation Advisory Group nor is there sufficient time to apply consensus in this case in TEA's view. We recommend it be abandoned as a sick joke and that the opposing or differing views and concerns simply be put, along with all submissions, unabridged that is, to FSC International.

Indeed we specifically call for all submissions to be left unabridged. Nothing else has any probity.

TEA also recommends that the decision-making meetings, which we assume will be face to face, should be recorded and minuted. That for each decision over the various stakeholder suggestions, comments and objections, reasons be given and documented for FSC International.

Conflicts of Interest and The Disproportionate Power Seekers

Regarding Dr Lain Dare's involvement, to which process are you referring?

“Lain is an independent engagement specialist. She designed the SH process and is doing work analysing the results. I am just the “organiser” of the process she is the expert. She was recommended by the Board of FSC Australia and has worked with Jackie Shirma.

Dr Lain Dare wrote the Stakeholder Engagement Plan but she is also the chair of the Pesticide Derogation Advisory Group and under the Stakeholder Engagement Plan she

has seemingly appointed herself as the person who facilitates a consensus of that Pesticide Derogation Advisory Group. In our view those multiple roles are conflicted. Additionally we are very concerned that she has a disproportionate amount of power and influence in the process.

In our email to Dr Dare we raised the conflict issue and stated:

“We have been raising concerns over FSC in Australia and Tasmania as well as other certification schemes since the mid 1990s. We consider Governance over forestry in Tasmania is completely inadequate, a sham and a disgrace. Likewise spraying legislation and regulation is completely inadequate and does not protect the safety of residents and others in proximity.

I would seek to read the 'stakeholder engagement plan' you prepared please.

I would also welcome reading your papers on governance. Can I access them easily, electronically?

We are absolutely not satisfied with the FSC derogation process and consider there to be far too many conflicts of interest. I consider you also have too great a stake in too many aspects of this process. I can set those conflicts out for you if you wish.

TEA is also concerned in the way this cornucopia of chemicals is being promoted. Until recently we were not aware of the plethora of chemicals over which derogation is being sought. We were only told of Forico and FT's request.

I note that conservation minded people and organisations continue to remove themselves from any association with FSC. There are good reasons that is occurring in our view.

At this stage we have formed a view: Any submission TEA makes to this derogation application process would be under sufferance.”

Indeed it would be cause for complaint on probity grounds and thus we call here and now for Dr Dare to recuse.

Mr O’Grady writes to TEA:

“To anticipate the next question Pinnacle (Mr O’Grady) is engaging Lain and on charging to the applicants.”

Who appointed Mr O'Grady to be the National Derogation Coordinator?

Mr O'Grady please advise whether you (Pinnacle) currently work directly or on a contract basis for any forestry company? If so which ones?

Mr O’Grady writes to TEA:

“Yes I do. I have a “cluster group” where companies receive updates on FSC especially where policy or standards change from the point of view of what the impact is on their systems and certification and what they need to do about it.

When they want work done in other areas I often get called on. All the applicants except 1 (WAPRES) are in the cluster group. The current size is about 17 companies. Most if not all big companies in Australia are involved in the group and It would be easier to say who is not a member. Namely WAPRES, 141 Plantations (Formally Forestry SA), Forest NSW.”

Mr O’Grady writes to TEA:

“Yes I was formally of Timbercorp (formally a company). I think we me when I was Chairman of FSC Australia doing the consultation on the FSC Australia controlled wood risk assessment.”

Mr O’Grady writes to TEA:

“To explain the process and my part in it. I am contracted to develop the derogation nationally, that is one derogation for each chemical rather than one per company per chemical. This is allowed for in the FSC Standard. I am also the go to person for the national stakeholder process. Although the process for the consultation has been managed by an Engagement specialist Dr Lain Dare Senior Research Fellow, Institute for Governance and Policy Analysis, University of Canberra. An important point is that there is a national process with responses via me but analysis by Lain Dare. BUT there is a local process for each company, That is that Forico should be your first point of contact. However feel free to copy me in.”

So making a comment to Mr O’Grady, who it would appear has possibly termed himself the “National Derogation Coordinator”, thus creating an illusion that he is something other than Pinnacle Pty Ltd, the consultant firm representing the 17 Forestry Corporations, 10 of which are applicants in the current process. TEA would go so far as to claim this to be tantamount to a deception, perhaps a deliberate one. Mr O’Grady has charge of receiving the community comments on the derogation applications and may indeed have influence over them in relation to the Pesticide Derogation Advisory Group.

TEA can find no terms of reference or job description for the role of “National Derogation Coordinator”. It is opaque, to be kind.

The community may not understand how many roles the seemingly perennially energetic and entrepreneurial the Mr O’Grady to have. Again TEA considers Mr O’Grady has too many roles and too many associations and thus TEA claims him to be a disproportionate power seeker.

Phil Whiteman is the representative for the Derogation Applicant forestry company Hancock Victoria Plantations (HVP Plantations) but he is also assessing the stakeholder feedback via his participation on the **Pesticide Derogation Advisory Group**.

David Bennett is the representative for the Derogation Applicant, forestry company PF Olsen Australia but he is also assessing the stakeholder feedback via his participation on the **Pesticide Derogation Advisory Group**.

The National Approach

Finally, given there would be a range of jurisdictions and regulations from state to state what was FSC's rationale in taking a national approach? Or was it not FSC who decided? Indeed who did decide?

“Good point. FSC standards allow for a national approach but the decisions to do so were the companies. The regulations were taken into account but in general the criteria from FSC go beyond regulatory minima.”

TEA wishes to make it abundantly clear we oppose a national Approach across the continent of Australia including the island state of Tasmania. TEA considers that it was not the companies which sought a national approach but more likely Mr O’Grady.

Opposed to Current Applications.

Past chemical derogations

In consideration of the derogations applied for by companies managing forestry in Australia for pesticides to FSC, it must be pointed out that the established EDCs are Amitrole, alpha-cypermethrin, Fipronyl, copper, Picloram, Glufosinate with no full knowledge regarding 1080 and Pindone (the full science is not yet in and so they cannot be considered ‘safe’ chemicals).

Applications Claimed to be Temporary

When one looks at the title of the application for Alpha cypermethrin (CAS No 67375–30–8) it states:

“FSC-TPL-30-001 Application for a temporary derogation to use a ‘highly hazardous’ pesticide”

“Active ingredient for which a temporary derogation is being requested: Alpha cypermethrin CAS No 67375–30–8”

The 2015 application follows directly from the 2011 Temporary application, which expires in February 2016.

TEA claims the application is not temporary in the terms of land use planning for example or indeed in any terms that the community could understand or find acceptable.

TEA claims that all the applications are not temporary. Certainly the ones, which follow on from 2011, cannot be claimed to be temporary. We claim a ‘business as usual’ situation.

Forestry Tasmania’s summary document over alpha cypermethrin states in the title:

“Forestry Tasmania’s Alpha-cypermethrin Summary Document on Forestry Tasmania’s application to the Forest Stewardship Council® for a temporary

derogation to allow the continued use of the insecticide alpha-cypermethrin in eucalypt plantations”

Underlining is our emphasis.

The word “Continued” is obviously closely associated with continuous and thus is not synonymous with temporary. The word ‘Continued’ has an Oxford Dictionary definition of: 1/ carried on without cessation, continual and 2/ Carried on in space, time or series, continual.

It is not possible to understand how a continual use could ever be equated or indeed accommodated with a temporary derogation. Indeed were FSC International to claim such an abhorrent deceit TEA is sure it would attract damaging media attention.

Applications not identified as Drafts or Consultation Drafts

When one reads the 25th September stakeholder letter from Forico one gains the impression that the published applications are merely drafts.

“Stakeholder comments will be used by:

- 1. Forico to incorporate within (i) Pesticide Application Plans and (ii) the alpha-cypermethrin derogation application;*
- 2. The Pesticide Derogation Advisory Group to ensure an accurate understanding of the perspectives of stakeholders and to develop potential control measures; and*
- 3. FSC International, in consideration of the derogation application.”*

When one looks at the title of the application for Alpha cypermethrin (CAS No 67375–30–8) it states:

“FSC-TPL-30-001 Application for a temporary derogation to use a ‘highly hazardous’ pesticide”

“Active ingredient for which a temporary derogation is being requested: Alpha cypermethrin CAS No 67375–30–8”

There is no identification of the Alpha cypermethrin document as a DRAFT.

This is the same situation and the same inadequacy as for all the other chemicals in the applications.

Not identifying the application to be draft is a fundamental problem where the application is obviously incomplete and insufficient. It is a draft. Indeed it may be that it is intended to be a Consultation Draft.

To be procedurally fair it is vital that people know the status of the application documents in advance of them being published.

They are purported to be final applications in our view in terms of the way in which they are portrayed on the FSC Australia website. We have taken a screen copy of the FSC website for our records and can make it available if required.

Applications Incomplete

A document on the FSC Australia website states:

“There are several parts of the applications that need to be completed by the Certifying Body (CB) or in consultation with the CB, OR require input from stakeholders before they can be completed.”

Applications Insufficient

The applications in several cases have not been sufficiently particularised to the Forestry Management Enterprise and the FMU concerned.

TEA sees no reason for going through each of the applications for each highly hazardous pesticide (HHP) and documenting all the errors, omissions and inadequacies. Too onerous a job for our unfunded, volunteer, community organisation, given our lack of confidence in the FSC process.

The application document ‘Information on missing parts on the derogation applications’

Simply shows that these so called applications are a work in progress. They are not complete and not sufficient and should not have gone out for stakeholder consultation at this stage.

Integrated Pest Management (IPM) Strategies

The FSC Derogation process described and defines IPM as:

“Integrated Pest Management (IPM): Pest and disease control method, where preventive measures and biological/physical/chemical methods are carefully selected and balanced taking into account the protection of health of humans and of the environment.”

It commits that forestry companies will have IPM Strategies. Where are they?

Are they so feeble as to be a non-event?

We contacted Forico last week seeking to receive a copy of the Forico Integrated Pest Management Plan but have not received a copy. It should be on their website.

We have just received it, perused it albeit briefly and note it is extremely basic to the extent we consider it inadequate. We would like to make further submission over those aspects.

Specific Highly Hazardous Chemical Concerns

Alpha Cypermethrin (“Alpha C”) CAS No. 67375-30-8

Alpha-Cypermethrin is classified by FSC as Highly Hazardous due to it's: “acute toxicity to mammals and birds & acute toxicity to aquatic organisms.”

TEA considers there to be a range of likely impacts from the application of this chemical on humans and that there is sufficient information that citizens are caused anxiety and fear they would be unsafe from nearby spraying or from the HHP becoming air or water born. The safety of citizens is more important than corporate profit.

Bear in mind that FSC carries significant benefits in certification terms and thus if there was a slight cost penalty in overall production terms, bearing in mind pest control is not the major cost of growing trees, then if the same rule applies to one as it does to all the additional costs is merely passed on to the end user. That would be “responsible”.

TEA does not support this derogation for Alpha Cypermethrin (“Alpha C”) CAS No. 67375-30-8.

Bees

Bees on the continent of Australia are an overriding public interest. Aside from Antarctica, Australia is the last continent free of Varroa mite and it is also free of colony collapse disorder. Chemicals, which affect bees, should not be certified under some derogation weasel words by FSC.

Bees cannot be claimed to be harmful and thus cannot be claimed to be a Pest under the Pesticide Derogation Procedure.

TEA believes there is sufficient contention over the impact on bees from Alpha-Cypermethrin to strongly warrant a precautionary approach and phase out. TEA can provide additional information about this aspect if required.

Other Derogations

TEA has long campaigned against 1080 and will never support the use of such cruel poisons anywhere for any purpose. Tasmania shows it can be removed from the forestry landscape and trees can still be grown successfully. Tasmania has more wildlife than any other state.

Triazine herbicides are proven carcinogens, which pollute ground water. There is no justification as far as we are concerned.

Fipronyl: If this product is not used with great care it kills bees. The Remaining Other HHPs we would seek to make comment on at a later stage.

Aerial Spraying is not safe in Tasmania.

Tasmania is one of the windier places on the planet. Tasmania is hillier, has more headwater streams, has more turbulent air flowing over it and for this reason alone the legislation and codes around aerial spraying remains inadequate and not equivalent to mainland Australia. Once the highly hazardous pesticide is on airstream it is away – out of control.

TEA has a position over aerial spraying and pesticide use, which briefly is summarised as follows:

Chemical regime of forestry plantations is unacceptable to the community. Aerial Spraying - Code of Practice is inadequate.

1. The preferable solution is to ban Aerial Spraying in forestry plantations and in native forest.
2. Reduced reliance on chemical spraying and especially on aerial spraying.
3. Introduce far more stringent controls including adequate notice provisions. [People currently often get only 24 hours notice.]
4. Establish substantial setbacks from roads, dwellings and other habitation and any Sensitive Use as well as streams and water tanks and storages.
5. Rights of objection and rights to be advised for people in the vicinity, say up to 2 kms to aerial spraying operations as a minimum.
6. Cessation of the use of triazine chemicals and any other recognised carcinogenic chemicals.
7. Ban triazine and other persistent herbicides completely. Is necessary for community health.

Currently Agricultural and Veterinary Chemicals (Control of Use) Act provides:

- o Anyone listed in the Aerial Spraying Code of Practice is to be notified (includes schools within 1km and residences within 100m)
- o Owners who have resided within 1km of the area being sprayed for at least 12 months can seek a direction from the Secretary that they be notified of spraying events.
- o Tenants who have resided on the property being sprayed for at least 12 months can seek a similar direction.

The Aerial Spraying Code does not specify when Notice is to be given. Notice given pursuant to a direction of the Secretary is to be in accordance with the direction.

The Aerial Spraying Code establishes the following inadequate buffer areas:

- o 1km of school during school hours
- o 100m of dwelling or boundary of residential / commercial zone
- o Over waterways

This Aerial Spraying Code is not enforced nor does industry even adhere to it. TEA would be willing to take any FSC official to places where clear breaches have occurred, especially waterways and the miserable and inadequate 100 metre setback. Making a complaint in Tasmania is a relatively useless activity where the third world bureaucracy has been told or rather guided into uselessness.

We can take FSC to places in Tasmania where the public road has been sprayed. Indeed we have a video of such an event where both a road and a stream were sprayed. This was some years ago and maybe the company concerned and its successor Forico have changed but maybe they have not. In any case the laws and the protections for the citizens of Tasmania manifestly remain inadequate.

TEA is, upon request and with assurances of confidentiality, willing to provide testimonials over aerial spraying incidents.

TEA's Recommended amendments:

1. Amend s.31 of the Agvet (Control of Use) Act 1995 to require notice be given to all landowners and occupants within prescribed distance, regardless of length of residence and without need to seek direction from Secretary.
2. Establish register for other interested parties to be informed (e.g. people with health concerns, organic farming enterprises). The Guidelines for Planned Burning 2009 is an example of this approach.
3. Amend r.9 of the Agvet (Control of Use) Regulations 1996 to extend prescribed distance to 2 km and introduce minimum and maximum notice periods (e.g. not less than 48 hours, not more than 14 days).
4. Amend Schedule 5 of the Agvet (Control of Use) Act 1995 to require applications for spraying permits to be advertised and an opportunity to object.
5. Amend Schedule 3 of the Agvet (Aerial Spraying) Order 1996 to include triazine chemicals in list of chemicals not to be aerially sprayed.
6. Amend the Aerial Spraying Code to include stricter setbacks from various boundaries and sensitive uses.

TEA would be interested in the records of pesticide drift into to the Cape Grim (Tasmania) atmospheric monitoring station.

So TEA does not support or accept the Tasmanian legislation or the Aerial Spraying Code. People do not feel safe living in rural in Tasmania and for good reason.

Because Tasmania is hilly and because some plantations are in hilly areas and on elevated sites, those sites gain much more wind than other sites nearby. The elevated site problem means that some of the sites are virtually permanently unsuited to any aerial application.

For example there is a Forestry Tasmania plantation site almost on the top of Christmas Hill, north west of Deloraine. It must be over 450 metres in altitude. The surrounding area either at Weetah or Parkham would be much lower, at around 200 to 250 metres.

Another example would be the Mersey Hill at Chudleigh where Forico have two plantations, which would be around 350 metres with the valley, floor around 250 metres. The people of Chudleigh consider and have documented what they call the Chudleigh cancer cluster, which they attribute to the pesticide spraying problem.

Another example would be Forico's Hingston plantation at Parkham ranging in the main from 250 to 400 metres and often windy. The writer's residence is downwind of this site and only 220 metres in altitude.

So it is very easy in all these situations for the pesticide to get airborne especially when the plantation trees grow up. Bear in mind that what is applied to be derogated are highly hazardous pesticides. So in the situation where FSC has been advised by stakeholders that the processes and laws to protect citizens are not adequate it should take a precautionary approach and not simply approve further derogations.

Cost claims – should not be a dominant consideration in terms of a derogation justification

In various rationales within the applications for the continued use of the highly hazardous pesticides there is a justification that other methods are more expensive and are then dismissed. That is not satisfactory and is not supported by TEA.

Regarding the FSC PESTICIDES POLICY FSC-POL-30-001 (2005) EN which was Approved December 2005 and states:

“FSC policy in relation to the use of pesticides in FSC-certified forests and plantations aims to minimise the negative environmental and social impacts of pesticide use whilst promoting economically viable management.”

TEA considers that the effect of the clause in the Policy is an irresponsible dismissal of the negative environmental and social impacts of pesticide use to the imperative of economically viable management. We call on the FSC Board to change the Policy and to drag it kicking and screaming into the 20th century and then into the 21st. It is currently a pile of rubbish.

FSC is completely out of step with modern land use planning and the concept of ecological sustainable development.

In Tasmania land use in the main comes under the Resource Management Planning System (RMPS) and that system has objectives including the approval objectives, which are reproduced below. You will see that those objectives provide a broad and even approach to development that is not dominated by the imperative of “economically viable management” to the disadvantage and diminishing of all others.

“PART 1 - Objectives of the Resource Management and Planning System of Tasmania

1. The objectives of the resource management and planning system of Tasmania are –

(a) to promote the sustainable development of natural and physical resources and the maintenance of ecological processes and genetic diversity; and

(b) to provide for the fair, orderly and sustainable use and development of air, land and water; and

(c) to encourage public involvement in resource management and planning; and

(d) to facilitate economic development in accordance with the objectives set out in paragraphs (a), (b) and (c); and

(e) to promote the sharing of responsibility for resource management and planning between the different spheres of Government, the community and industry in the State.

2. In clause 1(a), "sustainable development" means managing the use, development and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic and cultural well-being and for their health and safety while –

(a) sustaining the potential of natural and physical resources to meet the reasonably foreseeable needs of future generations; and

(b) safeguarding the life-supporting capacity of air, water, soil and ecosystems; and

(c) avoiding, remedying or mitigating any adverse effects of activities on the environment.

PART 2 - Objectives of the Planning Process Established by this Act

The objectives of the planning process established by this Act are, in support of the objectives set out in Part 1 of this Schedule –

(a) to require sound strategic planning and co-ordinated action by State and local government; and

(b) to establish a system of planning instruments to be the principal way of setting objectives, policies and controls for the use, development and protection of land; and

(c) to ensure that the effects on the environment are considered and provide for explicit consideration of social and economic effects when decisions are made about the use and development of land; and

(d) to require land use and development planning and policy to be easily integrated with environmental, social, economic, conservation and resource management policies at State, regional and municipal levels; and

(e) to provide for the consolidation of approvals for land use or development and related matters, and to co-ordinate planning approvals with related approvals; and

(f) to secure a pleasant, efficient and safe working, living and recreational environment for all Tasmanians and visitors to Tasmania; and

(g) to conserve those buildings, areas or other places which are of scientific, aesthetic, architectural or historical interest, or otherwise of special cultural value; and

(h) to protect public infrastructure and other assets and enable the orderly provision and co-ordination of public utilities and other facilities for the benefit of the community; and

(i) to provide a planning framework which fully considers land capability.”

Therefore TEA considers that in Tasmania at least there is a superior and more responsible way of considering land use development to the approach set out in the FSC PESTICIDES POLICY FSC-POL-30-001 (2005) EN. Indeed we consider the FSC Policy to be neither responsible nor sustainable.

Plantations are not Forests

FSC considers plantations erroneously to be forests:

“Plantation”

“Forest areas lacking most of the principal characteristics and key elements of native ecosystems as defined by FSC-approved national and regional standards of forest stewardship, which result from the human activities of either planting, sowing or intensive silvicultural treatments. FSC Source: FSC-STD-01-001”

TEA has long asserted and claimed that intensive artificial plantations, usually comprising exotic species (to the site) and usually where the site has a very low biophysical naturalness are not and cannot be responsibly claimed to be forests.

Land Clearance

Plantations in Tasmania have often been carved out of the native forest and placed hard up against the secure conservation reserves, despite advice given to the contrary.

The avoidance of Land Clearance activities by way of the change of corporate ownership of forest and plantations represents a serious dissatisfaction in FSC certification terms.

Legislative Reform of Forestry

TEA considers legislative and regulatory reform the most important aspect to transform forestry into a sustainable industry. Reform of all legislation where forestry is unreasonably assisted or exempted and/or favoured as well as where the people of Tasmania are unfairly disadvantaged is long overdue. Achieving such reform, mainly of State legislation, may require a Memorandum of Understanding type agreement that ensures reforms are implemented.

In particular a broad right of appeal to forestry operations is crucial to allow disputes over logging operations, regardless of tenure, to be fairly resolved. This has been largely denied Tasmanians for decades.

Legislative reform to ensure adequate and consistent rights of public participation in all land use planning decisions, including forestry activities is urgently and crucially required. This can occur within the current Forest Practices Act or under the planning legislation. Either would be acceptable to TEA.

Legislative reform must be far broader than that constrained by any interpretation of the Tasmanian Forest Agreement 2012, if a durable outcome is to be achieved. The current legislative package is completely unacceptable to TEA.

We consider it inappropriate and unworkable to encourage Forest Stewardship Certification (or any other certification scheme) without first enacting adequate legislative reform over forestry and forest practices. Genuine legislative reform of forestry has long been on the agenda but seemingly governments are not pursuing it.

Legislative and planning reform to level the playing field of forestry is the most equitable avenue to resolve the conflict in a durable way. We consider that governments must provide justice and avenues of redress regarding forestry to ensure the wellbeing of the community.

TEA's legislative reform proposals represent a core principled position for both a more comprehensive and equitable reform of forestry as well as biodiversity conservation and carbon sequestration. They are contained throughout this submission document.

TEA's view of the FSC Certification system

Dealing with the complexities of FSC criteria is hard, detailed work that requires time, expertise and sound proof from past activity to indicate the behaviour of the proposed future activity. Interestingly when one provides such proof with the FSC process, one does not necessarily get anywhere or even find out the outcome of one's representation. Then one must go to an appeal. That is atrocious and unjust.

For the public, FSC is unwieldy, complicated, not transparent, technical, voluminous and probably difficult for many to engage in participation. The pathways to appeal are also not straightforward or transparent. In our view it is a way of stopping public participation even though on the surface of things it looks so reasonable. We consider FSC is a merely a promotional tool for forestry corporations.

There is, in fact, no truly external appeal for a review of decisions. FSC has developed its own appeal body under a different name. (One is meant to be conversant with a vast array of documents and jargon to become FSC literate.)

Conclusion

TEA would have far preferred to work with the Forest Enterprise Managers directly and believe the whole derogation process should be redesigned as a matter of urgency.

We call upon FSC to reject all of the applications for temporary derogation for the reasons set out in this, our under sufferance representation, objection and complaint document.

We expect to hear from you regarding the outcome please. We strongly consider we should receive a copy of the report regardless of the outcome.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Andrew Ricketts', with a stylized, cursive script.

Andrew Ricketts
Convenor

Phone: (03) 6368 1343